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Attorneys for Defendant

8 REALTY MORTGAGE, LLC

9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12

ALI BAALOUACH,

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Plaintiff,

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vs.

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MEHDI NAFAI, DORIS ALICIA  
16 CORDOVA, SUMMIT MORTGAGE,  
REALTY MORTGAGE, LLC,  
17 Doe 1 through 10,

18

Defendants.

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Case No.: C 07-5433 MJJ

**DEFENDANT REALTY MORTGAGE,  
LLC.'S ANSWER**

Judge: Hon. Martin J. Jenkins

Complaint Date: October 24, 2007

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For its answer to Plaintiff's Complaint, Defendant Realty Mortgage, LLC ("Realty  
21 Mortgage") admits, denies, and affirmatively alleges as follows:

22

**Preliminary Statement**

23

1. Realty Mortgage denies the allegations contained in paragraph 1 insofar as they  
24 purport to state a claim against it.

25

**Jurisdiction and Venue**

26

2. Paragraph 2 sets forth no allegations of fact, but asserts a legal conclusion which  
27 requires no answer.

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3. Paragraph 3 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

4. Paragraph 4 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

5. Paragraph 5 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

## **Statutory Framework of RESPA**

6. Paragraph 6 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

7. Paragraph 7 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

8. Paragraph 8 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

9. Paragraph 9 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

10. Paragraph 10 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

11. Paragraph 11 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

12. Paragraph 12 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

13. Paragraph 13 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

14. Paragraph 14 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer.

## Facts

15. Realty Mortgage admits that the real property is located at 68 Cayuga Avenue, San Francisco, California 94112. Realty Mortgage is without knowledge or information sufficient to

1 form a belief as to the truth of the balance of the allegations in Paragraph 15, and therefore denies  
2 same.

3       16.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
4 to the truth of the allegations in Paragraph 16, and therefore denies same.

5       17.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
6 to the truth of the allegations in Paragraph 17, and therefore denies same.

7       18.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
8 to the truth of the allegations in Paragraph 18, and therefore denies same.'

9       19.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
10 to the truth of the allegations in Paragraph 19, and therefore denies same.

11      20.    Realty Mortgage admits the allegations in paragraph 20.

12      21.    Realty Mortgage admits the allegations in paragraph 21.

13      22.    Realty Mortgage admits that it made residential loans, including "federally related  
14 loans" as that phrase is defined by RESPA. Realty Mortgage is without knowledge or  
15 information sufficient to form a belief as to the truth of the balance of the allegations in Paragraph  
16 22, and therefore denies same.

17      23.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
18 to the truth of the allegations in Paragraph 23, and therefore denies same.

19      24.    Realty Mortgage admits the allegations in paragraph 24.

20      25.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
21 to the truth of the allegations in Paragraph 25, and therefore denies same.

22      26.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
23 to the truth of the allegations in Paragraph 26, and therefore denies same.

24      27.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
25 to the truth of the allegations in Paragraph 27, and therefore denies same.

26      28.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
27 to the truth of the allegations in Paragraph 28, and therefore denies same.

1       29.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
2 to the truth of the allegations in Paragraph 29, and therefore denies same.

3       30.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
4 to the truth of the allegations in Paragraph 30, and therefore denies same.

5       31.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
6 to the truth of the allegations in Paragraph 31, and therefore denies same.

7       32.    Realty Mortgage admits that 12 U.S.C. § 2604 does require the disclosure of  
8 certain information, that 12 U.S.C. § 2604 does prohibit “kickbacks,” and that Summit Mortgage  
9 would have been obligated to comply with these provisions. Realty Mortgage is without  
10 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
11 Paragraph 32, and therefore denies same.

12      33.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in Paragraph 33, and therefore denies same.

14      34.    Realty Mortgage admits the allegations in paragraph 34.

15      35.    Realty Mortgage admits the allegations in paragraph 35.

16      36.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
17 to the truth of the allegations in Paragraph 36, and therefore denies same.

18      37.    Realty Mortgage admits the allegations in paragraph 37.

19      38.    Realty Mortgage admits the allegations in paragraph 38.

20      39.    Realty Mortgage admits the allegations in paragraph 39.

21      40.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
22 to the truth of the allegations in Paragraph 40, and therefore denies same.

23      41.    Realty Mortgage is without knowledge or information sufficient to form a belief as  
24 to the truth of the allegations in Paragraph 41, and therefore denies same.

25      42.    Realty Mortgage admits the allegations in paragraph 42.

26      43.    Realty Mortgage admits the allegations in paragraph 43.

1       44. Paragraph 44 sets forth no allegations of fact, but asserts a legal conclusion which  
2 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
3 Mortgage denies the allegations in paragraph 44.

4       45. Paragraph 45 sets forth no allegations of fact, but asserts a legal conclusion which  
5 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
6 Mortgage denies the allegations in paragraph 45.

7       46. Paragraph 46 sets forth no allegations of fact, but asserts a legal conclusion which  
8 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
9 Mortgage denies the allegations in paragraph 46.

10      47. Paragraph 47 sets forth no allegations of fact, but asserts a legal conclusion which  
11 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
12 Mortgage denies the allegations in paragraph 47.

13      48. Realty Mortgage is without knowledge or information sufficient to form a belief as  
14 to the truth of the allegations in Paragraph 48, and therefore denies same.

15      49. Realty Mortgage is without knowledge or information sufficient to form a belief as  
16 to the truth of the allegations in Paragraph 49, and therefore denies same.

17      50. Paragraph 50 sets forth no allegations of fact, but asserts a legal conclusion which  
18 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
19 Mortgage denies the allegations in paragraph 50 directed at it, and is without knowledge or  
20 information sufficient to form a belief as to the truth of the remaining allegations, and therefore  
21 denies same.

22      51. Realty Mortgage is without knowledge or information sufficient to form a belief as  
23 to the truth of the allegations in Paragraph 51, and therefore denies same.

24      52. Realty Mortgage is without knowledge or information sufficient to form a belief as  
25 to the truth of the allegations in Paragraph 52, and therefore denies same.

26      53. Realty Mortgage is without knowledge or information sufficient to form a belief as  
27 to the truth of the allegations in Paragraph 53, and therefore denies same.

1                   **Count I: RESPA Violations (As Against Realty Mortgage)**

2       54.    Realty Mortgage incorporates by reference its responses to the prior paragraphs  
3 herein as if fully restated.

4       55.    Paragraph 55 sets forth no allegations of fact, but asserts a legal conclusion which  
5 requires no answer.

6       56.    Paragraph 56 sets forth no allegations of fact, but asserts a legal conclusion which  
7 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
8 Mortgage denies the allegations in paragraph 56.

9       57.    Paragraph 57 sets forth no allegations of fact, but asserts a legal conclusion which  
10 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
11 Mortgage denies the allegations in paragraph 57.

12      58.    Paragraph 58 sets forth no allegations of fact, but asserts a legal conclusion which  
13 requires no answer. To the extent these allegations may be deemed to require an answer, Realty  
14 Mortgage denies the allegations in paragraph 58.

15                   **Count II: RESPA Violations**

16                   **(Not Alleged Against Realty Mortgage)**

17      59.    Realty Mortgage incorporates by reference its responses to the prior paragraphs  
18 herein as if fully restated.

19      60.    Paragraph 60 sets forth no allegations of fact, but asserts a legal conclusion which  
20 requires no answer. Moreover, these allegations support no claim against Realty Mortgage and  
21 therefore requires no answer. To the extent these allegations may be deemed to require an  
22 answer, Realty Mortgage denies the allegations in paragraph 60.

23      61.    Paragraph 61 sets forth no allegations of fact, but asserts a legal conclusion which  
24 requires no answer. Moreover, these allegations support no claim against Realty Mortgage and  
25 therefore requires no answer. To the extent these allegations may be deemed to require an  
26 answer, Realty Mortgage denies the allegations in paragraph 61.

27      62.    Paragraph 62 sets forth no allegations of fact, but asserts a legal conclusion which  
28 requires no answer. Moreover, these allegations support no claim against Realty Mortgage and

therefore requires no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage denies the allegations in paragraph 62.

63. Paragraph 63 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer. Moreover, these allegations support no claim against Realty Mortgage and therefore requires no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage denies the allegations in paragraph 63.

### **Count III: Breach of Fiduciary Duty**

**(Not Alleged Against Realty Mortgage)**

64. Realty Mortgage incorporates by reference its responses to the prior paragraphs herein as if fully restated.

65. These allegations support no claim against Realty Mortgage and therefore requires no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65, and therefore denies same.

66. Paragraph 66 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer. Moreover, these allegations support no claim against Realty Mortgage and therefore requires no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage denies the allegations in paragraph 66.

**Count IV: Deceit As Defined In California Civil Code §§1709-1710**

**(Not Alleged Against Realty Mortgage)**

67. Realty Mortgage incorporates by reference its responses to the prior paragraphs herein as if fully restated.

68. These allegations support no claim against Realty Mortgage and therefore requires no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68, and therefore denies same.

69. These allegations support no claim against Realty Mortgage and therefore requires no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage

1 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
2 Paragraph 69, and therefore denies same.

3       70. These allegations support no claim against Realty Mortgage and therefore requires  
4 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
5 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
6 Paragraph 70, and therefore denies same.

7       71. These allegations support no claim against Realty Mortgage and therefore requires  
8 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
9 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
10 Paragraph 71, and therefore denies same.

11       72. These allegations support no claim against Realty Mortgage and therefore requires  
12 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
13 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
14 Paragraph 72, and therefore denies same.

15       73. These allegations support no claim against Realty Mortgage and therefore requires  
16 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
17 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
18 Paragraph 73, and therefore denies same.

19       74. These allegations support no claim against Realty Mortgage and therefore requires  
20 no answer. To the extent these allegations may be deemed to require an answer, Paragraph 74  
21 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer. To the  
22 extent these allegations may be deemed to require an answer, Realty Mortgage denies the  
23 allegations in paragraph 74.

24       75. These allegations support no claim against Realty Mortgage and therefore requires  
25 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
26 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
27 Paragraph 75, and therefore denies same.

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1       76. These allegations support no claim against Realty Mortgage and therefore requires  
2 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
3 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
4 Paragraph 76, and therefore denies same.

5       77. These allegations support no claim against Realty Mortgage and therefore requires  
6 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
7 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
8 Paragraph 77, and therefore denies same.

9       78. These allegations support no claim against Realty Mortgage and therefore requires  
10 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
11 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
12 Paragraph 78, and therefore denies same.

13       79. These allegations support no claim against Realty Mortgage and therefore requires  
14 no answer. To the extent these allegations may be deemed to require an answer, Realty Mortgage  
15 is without knowledge or information sufficient to form a belief as to the truth of the allegations in  
16 Paragraph 79, and therefore denies same.

17       80. These allegations support no claim against Realty Mortgage and therefore requires  
18 no answer. To the extent these allegations may be deemed to require an answer, Paragraph 80  
19 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer. To the  
20 extent these allegations may be deemed to require an answer, Realty Mortgage denies the  
21 allegations in paragraph 80.

22       81. These allegations support no claim against Realty Mortgage and therefore requires  
23 no answer. To the extent these allegations may be deemed to require an answer, Paragraph 81  
24 sets forth no allegations of fact, but asserts a legal conclusion which requires no answer. To the  
25 extent these allegations may be deemed to require an answer, Realty Mortgage denies the  
26 allegations in paragraph 81.

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### **Affirmative Defenses:**

Realty Mortgage asserts the following defenses to the claims for relief pleaded against it in the Complaint:

## **FIRST AFFIRMATIVE DEFENSE (Failure to State Claim for Relief)**

Each and every claim for relief of the Complaint fails to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE (Uncertainty)**

Each and every claim for relief of the Complaint is vague and uncertain.

## **THIRD AFFIRMATIVE DEFENSE (Privileged Acts)**

Each and every claim for relief of the Complaint is barred because Realty Mortgage's actions were privileged.

## **FOURTH AFFIRMATIVE DEFENSE (Justified)**

Each and every claim for relief of the Complaint is barred because Realty Mortgage's actions were justified.

## **FIFTH AFFIRMATIVE DEFENSE (Unclean Hands)**

Each and every claim for relief of the Complaint is barred by the doctrine of unclean hands.

## SIXTH AFFIRMATIVE DEFENSE (Laches)

Each and every claim for relief of the Complaint is barred by the doctrine of laches.

## **SEVENTH AFFIRMATIVE DEFENSE (Estoppel)**

Each and every claim for relief of the Complaint is barred by doctrine of estoppel.

## **EIGHTH AFFIRMATIVE DEFENSE (Waiver)**

Each and every claim for relief of the Complaint is barred by the doctrine of waiver.

1                           **NINTH AFFIRMATIVE DEFENSE**  
 2                           **(Consent)**

3                           Each and every claim for relief of the Complaint is barred because Plaintiff had  
 4 knowledge of and consented to the acts of Defendants, if any such acts occurred.

5                           **TENTH AFFIRMATIVE DEFENSE**  
 6                           **(Acts of Others)**

7                           Each and every claim for relief of the Complaint is barred because Plaintiff's damages, if  
 8 any, were the result of Plaintiff's own conduct or the acts of third parties.

9                           **ELEVENTH AFFIRMATIVE DEFENSE**  
 10                          **(Comparative Fault)**

11                          Each and every claim for relief of the Complaint is limited by the doctrine of comparative  
 12 fault.

13                          **TWELFTH AFFIRMATIVE DEFENSE**  
 14                          **(Failure to Mitigate)**

15                          Plaintiff is bound to exercise reasonable care and diligence to avoid loss and minimize his  
 16 damages, if any. Plaintiff may not recover for losses alleged in any of his claims for relief as any  
 17 such losses could have been prevented by reasonable efforts on the part of the Plaintiff.

18                          **THIRTEENTH AFFIRMATIVE DEFENSE**  
 19                          **(No Damages)**

20                          The Complaint fails to state a claim for relief because Plaintiff has not suffered, and will  
 21 not suffer, any damages as a result of any action or inaction of Realty Mortgage.

22                          **FOURTEENTH AFFIRMATIVE DEFENSE**  
 23                          **(Statute of Limitations)**

24                          Each and every claim for relief of the Complaint is barred or limited to the extent possible  
 25 by the applicable statute(s) of limitations.

26                          **FIFTEENTH AFFIRMATIVE DEFENSE**  
 27                          **(Set Off)**

28                          Each and every claim for relief of the Complaint, and the damages sought, are limited in  
 29 part or in full because of set offs based on the conduct of the Plaintiff and/or claims of Realty  
 30 Mortgage.

1                           **SIXTEENTH AFFIRMATIVE DEFENSE**  
 2                           **(No Duty)**

3                           Realty Mortgage assert that it owed no duty to Plaintiff, or to the extent that any duty was  
 4                           owed, Realty Mortgage satisfied its obligations.

5                           **SEVENTEENTH AFFIRMATIVE DEFENSE**  
 6                           **(Reservation of Rights)**

7                           Realty Mortgage currently has insufficient knowledge or information on which to form a  
 8                           belief as to whether it may have additional, as yet unstated, defenses available. Realty Mortgage  
 9                           expressly reserves its right to assert additional affirmative defenses in the event that discovery  
 10                          indicates other affirmative defenses would be appropriate.

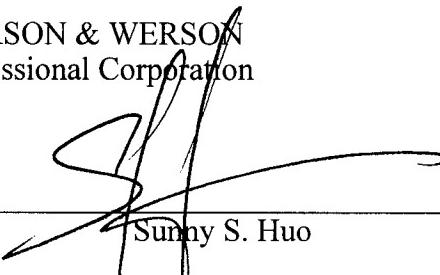
11                          WHEREFORE REALTY MORTGAGE PRAYS:

- 12                          1.       That the Complaint and each claim stated therein be denied and dismissed.  
 13                          2.       That judgment on the Complaint is awarded against the Plaintiffs and in favor of  
                             Realty Mortgage.  
 14                          3.       That Realty Mortgage be awarded its costs and expenses.  
 15                          4.       For such other relief as this Court deems just.

16                          DATED: January 11, 2008

17                          SEVERSON & WERSON  
 18                          A Professional Corporation

19                          By: \_\_\_\_\_

20                            
 21                          Sunny S. Huo  
 22                          Attorneys for Defendant  
 23                          REALTY MORTGAGE, LLC